

IN THE SUPREME COURT OF THE STATE OF DELAWARE

RONALD L. EVANS, JR.,	§
	§
Defendant Below-	§ No. 501, 2010
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for Kent County
	§ Cr. ID Nos. 0808023433
Plaintiff Below-	§ and 0807012992
Appellee.	§

Submitted: March 11, 2011

Decided: May 9, 2011

Before **STEELE**, Chief Justice, **HOLLAND**, and **RIDGELY**, Justices.

ORDER

This 9th day of May 2011, upon consideration of the parties' briefs and the record below, it appears to the Court that:

(1) The appellant, Ronald Evans, filed this appeal from the Superior Court's denial of his first motion for postconviction relief. After careful review, we find no merit to the issues Evans has raised on appeal. Accordingly, we affirm the Superior Court's judgment.

(2) The record reflects that Evans was arrested in July 2008 and again in August 2008 and charged in separate indictments with twenty-five criminal offenses, which were consolidated. In January 2009, Evans' counsel filed a motion to dismiss and motions to suppress evidence. In March 2009, Evans pled guilty to

one count of trafficking cocaine (10 to 50 grams) and three counts of possession with intent to deliver cocaine. In exchange for his guilty plea, the State dismissed the remaining charges and agreed not to seek habitual offender status or sentencing for Evans. The State also agreed to recommend a total sentence of seventy years, to be suspended after serving twelve years for decreasing levels of supervision. The Superior Court sentenced Evans in accordance with his plea agreement. Evans did not file a direct appeal to this Court. Instead, he filed a motion for postconviction relief,¹ which was referred to a Commissioner for findings and a recommendation. After obtaining responses from defense counsel and counsel for the State, the Commissioner recommended denial of the motion. The Superior Court accepted the Commissioner's report and recommendation and denied Evans' motion for postconviction relief on August 4, 2010. This appeal followed.

(3) Evans raises six issues in his opening brief on appeal: (i) the Superior Court abused its discretion in denying his motion for postconviction relief; (ii) his due process rights were violated when the Superior Court allowed the State to file a response to his postconviction motion out of time; (iii) his convictions and sentences for trafficking and possession with intent to deliver violate double jeopardy principles; (iv) the prosecutor engaged in misconduct; (v) he was denied his right to the effective assistance of counsel; and (vi) the Superior Court violated

¹ Evans presented the following claims in the postconviction motion he filed in the Superior Court: (i) illegal detention and arrest; (ii) illegal search and seizure; (iii) double jeopardy violations; and (iv) prosecutorial misconduct; and (v) ineffective assistance of counsel.

his constitutional rights when it allowed defense counsel to appear before the Court several times prior to accepting his guilty plea. This last issue was not raised in the motion Evans filed in the Superior Court. Accordingly, we will not consider this claim for the first time on appeal.² We address his remaining claims below.

(4) To support a claim of ineffective assistance of counsel following the entry of a guilty plea, a defendant must demonstrate that: (a) counsel's conduct fell below an objective standard of reasonableness; and (b) there is a reasonable probability that, but for counsel's errors, the defendant would not have pled guilty but would have insisted on going to trial.³ A defendant must make concrete allegations of cause and actual prejudice to substantiate a claim of ineffective assistance of counsel.⁴ Evans essentially argues in this case that his counsel was ineffective for advising him to plead guilty before she had received all of the discovery materials from the State, which were necessary to evaluate the merits of his case.

(5) In response to Evans' allegations, counsel stated in her affidavit that she initially did not receive all of the necessary discovery materials prior to her filing motions to suppress and dismiss on Evans' behalf. After the motions to suppress were denied without prejudice for lack of factual specificity, the Superior Court set deadlines for the State to provide the necessary discovery. Counsel

² Del. Supr. Ct. R. 8 (2011).

³ *Hill v. Lockhart*, 474 U.S. 52, 58 (1985).

⁴ *Younger v. State*, 580 A.2d 552, 556 (Del. 1980).

asserts that, upon receipt of those discovery materials, she was able to refile the motions to suppress, which were scheduled to be heard on the day of trial. Given the evidence against Evans, which included his videotaped admissions, and the possible life sentence he was facing as a habitual offender if he were convicted of any one of the felony charges against him, counsel advised Evans that the plea offered by the State was in his best interest but that she was prepared to go to trial if Evans rejected the plea offer. In reviewing Evans' allegations of ineffectiveness and counsel's response thereto, the Superior Court found counsel's response to be more credible than Evans' unsubstantiated allegations that his attorney was not fully prepared. The Superior Court concluded, and we agree, that under the circumstances, counsel's performance was well within the standards of reasonableness.

(6) Moreover, Evans' expressed satisfaction with his counsel's representation and stated under oath that he was pleading guilty because he was, in fact, guilty of the charged offenses. In the absence of clear and convincing evidence to the contrary, Evans is bound by these statements.⁵ We thus reject Evans' claim that his guilty plea was involuntary due to his counsel's ineffective assistance.

⁵ *Somerville v. State*, 703 A.2d 629, 632 (Del. 1997).

(7) Because we find that Evans entered his guilty plea knowingly, intelligently, and voluntarily, we need not consider his claims of illegal search and seizure, double jeopardy/multiplicity violations, or prosecutorial misconduct. A voluntary guilty plea waives any claims of errors occurring prior to the entry of the plea.⁶ Evans, through his voluntary plea, has waived his right to raise those arguments now.

(8) Finally, we find no merit to Evans' contention that his constitutional rights were violated when the Superior Court granted the State's request to file a response to Evans' postconviction motion out-of-time. The Superior Court has discretion to grant such extension requests.⁷ Evans can establish no prejudice from the Superior Court's decision to allow the State several extra days to file its response.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Myron T. Steele
Chief Justice

⁶ See *Benge v. State*, 945 A.2d 1099, 1201 (Del. 2008) ("Under Delaware law, a voluntary guilty plea constitutes a waiver of any alleged errors or defects occurring prior to the entry of the plea, including a multiplicity defect.").

⁷ Del. Super. Ct. Crim. R. 45(b) (2011).